

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: AR 17-05
DATE REFERRED: August 2, 2017
DATE OF NOTIFICATION: August 8, 2017
LAST RESPONSE RECEIVED: October 16, 2017
DATE ACTIVATED: September 29, 2017

EARLIEST SOL: February 18, 2016
LATEST SOL: February 3, 2018¹
ELECTION CYCLE: 2012

SOURCE: Audit Referral

RESPONDENTS: Colorado Republican Committee and Marty
Neilson, in her official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30104(b)(2)
52 U.S.C. § 30104(b)(4)
52 U.S.C. § 30104(b)(4)(H)(iii)
52 U.S.C. § 30104(g)
52 U.S.C. § 30104(b)(8)
52 U.S.C. § 30104(b)(2)(F)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

RAD REFERRAL: RR 17L-19
DATE OF NOTIFICATION: August 3, 2017
LAST RESPONSE RECEIVED: October 27, 2017
DATE ACTIVATED: October 13, 2017

EARLIEST SOL: October 27, 2022
ELECTION CYCLE: 2016

SOURCE: RAD Referral

¹ Portions of the activity in the Audit Referral had expired under the statute of limitations ("SOL") when OGC received this referral. On October 2, 2017, Respondents signed a tolling agreement extending the SOL for unexpired activity for 90 days. As discussed below, at least \$421,654 in increased activity, \$610,173.70 in independent expenditure reporting, and \$133,487 in debt reporting remain within the SOL. Consistent with usual practice, we plan to seek additional tolling during pre-probable cause conciliation.

RESPONDENTS: Colorado Republican Committee and Marty
Neilson, in her official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:** 52 U.S.C. § 30104(b)(2)

INTERNAL REPORTS CHECKED: RAD Reports
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

These matters arise from an audit of the Colorado Republican Committee's (the
"Committee") activity during the 2012 election cycle² and a Reports Analysis Division ("RAD")
referral of the Committee's activity during the 2016 election cycle.

On July 19, 2017, the Commission approved the Final Audit Report regarding the 2012
cycle activity, and the Audit Division referred three findings to the Office of General Counsel
("OGC") for possible enforcement action: (1) misstatement of financial activity – original reports
filed; (2) failure to file 24- and 48-hour reports; and (3) failure to itemize debts and obligations.³
In addition, RAD referred the Committee to the Commission's Alternative Dispute Resolution
Office ("ADRO") for failing to disclose all receipts on their 2016 12-Day Pre-General Report⁴—
this activity was later referred to OGC on October 12, 2017.⁵

² See Attach. 1, Final Audit Report.

³ See *id.*

⁴ See Memorandum from Debbie Chacona, RAD, to Krista Roche, ADRO, RR 17L-09 (July 21, 2017) (the
"RAD Referral").

⁵ See Memorandum from Krista Roche, ADRO, to Jeff Jordan, OGC, RAD Referral 17L-19 (Oct. 12, 2017).

1 In their Responses, the Committee does not dispute the underlying facts of either referral,
2 but requests that both matters be transferred to ADRO.⁶

3 For the reasons that follow, we recommend that the Commission open a MUR as to both
4 referrals and find reason to believe that: (1) the Committee misstated its financial activity in
5 2011 and 2012, in violation of 52 U.S.C. § 30104(b)(2) and (4); (2) failed to file 24- and 48-
6 hour reports for independent expenditures, in violation of 52 U.S.C. § 30104(g)(1); (3) failed to
7 disclose outstanding debts, in violation of 52 U.S.C. § 30104(b)(8); and (4) failed to disclose all
8 receipts, in violation of 52 U.S.C. § 30104(b)(2)(F). Additionally, we recommend that the
9 Commission authorize pre-probable cause conciliation and approve the attached conciliation
10 agreement.

11 II. FACTUAL AND LEGAL ANALYSIS

12 A. Audit Report (2012 Cycle Activity)

13 Three findings from the Audit Report were referred to OGC, and we recommend that the
14 Commission pursue all three.

15 1. Misstatement of Financial Activity – Original Reports Filed

16 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
17 treasurers to file reports of receipts and disbursements in accordance with the provisions of
18 52 U.S.C. § 30104(b). The Interim Audit Report showed that the Committee underreported its
19 receipts and disbursements by \$1,440,785 during 2011 and 2012.⁷ The Committee agreed with
20 the auditors and explained that the misstatements had been inadvertent.⁸ Prior to the Final Audit

⁶ AR 17-01 Resp. at 1 (Oct. 16, 2017); RR 17L-09 Resp. at 2 (Oct. 27, 2017).

⁷ Final Audit Report at 10.

⁸ *Id.*

1 Report, the Committee filed amended reports which corrected the misstatements.⁹ In its Final
2 Audit Report, the Commission found that the Committee had materially misstated its financial
3 activity in its original reports filed in 2011 and 2012.¹⁰ Accordingly, we recommend that the
4 Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2) and (4).

5 **2. Failure to File 24- and 48-Hour Reports**

6 The Act requires political committees other than authorized committees to report
7 independent expenditures on their regularly scheduled disclosure reports.¹¹ In addition, political
8 committees that make independent expenditures aggregating \$1,000 or more with respect to a
9 given election after the 20th day, but more than 24 hours before the date of that election, must
10 disclose them on reports filed within 24 hours, and after each independent expenditure
11 aggregating an additional \$1,000.¹² A political committee that makes or contracts to make
12 independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to
13 and including the 20th day before an election, must report these expenditures on reports filed by
14 the end of the second day "following the date on which a communication that constitutes an
15 independent expenditure is publicly distributed or otherwise publicly disseminated."¹³

⁹ *Id.* at 9-10. The amended reports corrected the misstatements of the Committee's receipts and disbursements, but the Final Audit Report notes that the Committee did not follow the Audit recommendation to reconcile the Committee's reported 2012 ending cash balance, which was understated by \$21,364 on their 2012 Year-End Report. *Id.* at 8-10.

¹⁰ *Id.* at 11. The Commission found that the Committee had understated its receipts by \$803,097 and its disbursements by \$637,688 during 2011 and 2012. *Id.* at 10.

¹¹ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii); 11 C.F.R. § 104.3(b)(3)(vii).

¹² 11 C.F.R. § 104.4(c).

¹³ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

1 The Interim Audit Report recommended that the Committee provide documentation to
2 support the dates of public dissemination for each communication.¹⁴ The Committee responded
3 that the communications were not reportable as independent expenditures because they were
4 subject to the volunteer materials exception.¹⁵ The Draft Final Audit Report reiterated the
5 recommendation that the Committee either disclose the independent expenditures or provide
6 documentation demonstrating that the volunteer materials exception applied.¹⁶ The Committee
7 provided additional documentation, which included four additional direct mailers and two new
8 invoices and associated some of the direct mail communications with specific invoices.¹⁷ The
9 Committee, however, argued that 24- and 48-hour reports were not necessary and stated that it
10 would not make any amendments to disclose the disbursements as independent expenditures.¹⁸

11 The Commission found that the Committee failed to file 24- and 48-hour reports for 35
12 independent expenditures totaling \$694,681.53 and 51 direct mailers not associated with any
13 invoices.¹⁹ Accordingly, we recommend that the Commission find reason to believe that the
14 Committee violated 52 U.S.C. § 30104(g)(1) by failing to timely file independent expenditure
15 reports.

¹⁴ Final Audit Report at 18.

¹⁵ *Id.*

¹⁶ *Id.* at 19.

¹⁷ *Id.* The additional documentation increased the total amount of potential unreported independent expenditures to \$963,758 and reduced the number of communications not associated with invoices from 77 to 68.
Id.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 19.

1 **3. Failure to Itemize Debts and Obligations**

2 Political committees must disclose the amount and nature of outstanding debts and
3 obligations until those debts are extinguished.²⁰ Debts of \$500 or less must be reported no later
4 than 60 days after the obligation is incurred, while debts of more than \$500 must be reported as
5 of the date the obligation is incurred.²¹ The Interim Audit Report identified \$235,968 in debts
6 owed to three vendors that the Committee had not previously disclosed.²² In response to the
7 Interim Audit Report, the Committee amended its reports to disclose debts owed to two of those
8 vendors, but stated that it would not amend its reports to disclose a \$133,487 disputed debt owed
9 to a get-out-the-vote ("GOTV") vendor.²³

10 The Draft Final Audit Report concluded that absent amended filings disclosing the
11 GOTV vendor debt, the issue was unresolved. The Committee requested, and was granted, a
12 hearing on the matter. At the hearing, the Committee argued that it should not be required to
13 amend its reports because the contract had been terminated, the debt had been disputed, the
14 vendor had made no efforts to recoup payment, and suit for recovery was barred by the statute of
15 limitations in Colorado.²⁴

16 The Commission found that the Committee failed to itemize debts and obligations
17 totaling \$235,968.²⁵ Accordingly, we recommend that the Commission find reason to believe
18 that the Committee violated 52 U.S.C. § 30104(b)(8).

²⁰ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²¹ See 11 C.F.R. § 104.11(b).

²² Final Audit Report at 23-24.

²³ *Id.* at 24.

²⁴ *Id.* at 25.

²⁵ *Id.* at 25.

B. RAD Referral (2016 Cycle Activity)

RAD referred the Committee for failing to disclose \$132,560 in receipts on its 2016 12-Day Pre-General Report, which the Committee states was associated with a transfer from the Republican National Committee.²⁶ The increased activity was disclosed by the Committee on an amended 2016 12-Day Pre-General Report filed January 31, 2017.²⁷ Since the record indicates — and the Committee does not deny²⁸ — that the Committee failed to report the transfer, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2)(F).²⁹

²⁶ See RAD Referral at 1 (July 21, 2017). In response to a Request for Additional Information (“RFAI”) prior to the RAD Referral, the Committee stated that the increased activity was the “result of a transfer from the RNC that was not included in the financial records of the party until a bank reconciliation was performed ... in the normal course of business at the end of the month ...” RAD Referral at 2. The Committee does not explain the delay between the discovery of the discrepancy and the filing of the amended report on January 31, 2017.

²⁷ *Id.* at 2.

²⁸ RR 17L-19 Resp. at 2. Respondents allege that they did not receive the RFAI sent by RAD on April 16, 2017, but admit that the Committee’s original 2016 12-Day Pre-General Report erroneously omitted \$132,560 in receipts, necessitating the January 31, 2017, amendment.

²⁹ As to Respondents’ request that the Audit and RAD referrals be referred to ADRO, both matters were properly referred to OGC. See Note 4 and Audit Referral at 1.

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IV. RECOMMENDATIONS

1. Open a MUR in AR 17-05;
2. Merge RR 17L-19 into the MUR;
3. Find reason to believe that the Colorado Republican Committee and Marty Neilson, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b)(2) and (4);
4. Find reason to believe that the Colorado Republican Committee and Marty Neilson, in her official capacity as treasurer, violated 52 U.S.C. § 30104(g)(1);
5. Find reason to believe that the Colorado Republican Committee and Marty Neilson, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b)(8);
6. Find reason to believe that the Colorado Republican Committee and Marty Neilson, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b)(2)(F);
7. Approve the attached Factual and Legal Analysis;
8. Authorize pre-probable cause conciliation with Colorado Republican Committee and Marty Neilson in her official capacity as treasurer;
9. Approve the attached proposed conciliation agreement; and
10. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen Guith
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11-6-17

Date

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Attachments

1. Final Audit Report
- 2.
3. Factual & Legal Analysis



Final Audit Report of the Commission on the Colorado Republican Committee

(January 1, 2011 - December 31, 2012)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 3)

The Colorado Republican Committee is a state party committee headquartered in Greenwood Village, Colorado. For more information, see the chart on the Committee Organization, p. 3.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 1,975,834
○ Contributions from Political Committees	61,630
○ Transfers from Affiliated and Other Party Committees	8,332,317
○ Transfers from Non-Federal Accounts	1,940
○ Other Receipts	235,765
Total Receipts	\$ 10,607,486
• Disbursements	
○ Operating Expenditures	\$ 8,863,660
○ Federal Election Activity	1,374,497
○ Refunds of Contributions	3,050
Total Disbursements	\$ 10,241,207

Commission Findings (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Apparent Independent Expenditures (Finding 2)
- Recordkeeping for Communications (Finding 3)
- Failure to Itemize Debts and Obligations (Finding 4)

Additional Issue (p. 26)

- Misstatement of Financial Activity – Unreported Bank Account

¹ 52 U.S.C. §30111(b).

Final Audit Report of the Commission on the Colorado Republican Committee

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Colorado Republican Committee (CRC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of contributions from prohibited sources;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of disbursements, debts and obligations;
4. the disclosure of expenses allocated between federal and non-federal accounts;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," CRC requested early consideration of a legal question raised during the audit. Specifically, CRC questioned whether the requirement under 11 CFR §104.3(d) to disclose outstanding debt on Schedule D (Debt and Obligations) violated attorney - client privilege when the debt related to outstanding legal representation services.

The Commission concluded, by a vote of 6-0, that the Colorado rules of confidentiality do not preclude the Commission from requiring CRC to report an outstanding debt and/or obligation owed by or to CRC from its legal counsel under 52 U.S.C. §30104(b)(8) and 11 C.F.R. §104.3(d). The Audit staff informed CRC's Counsel of the Commission's decision on CRC's request. This audit report includes findings and recommendations with respect to CRC's failure to disclose outstanding debt owed to its legal representative. (See Finding 4, p. 22.)

Limitations

CRC satisfied the minimum disbursement recordkeeping requirements of 11 CFR§102.9. However, in response to the Internal Control Questionnaire (ICQ) presented by the Audit staff at the beginning of the audit, CRC representatives identified a federal bank account titled "Federal Transfer Account" but did not provide bank statements from the audit period pertaining to that account. Without these statements, the Audit staff could not determine if federal activity related to this account was properly reported.

Audit Hearing

CRC requested a hearing before the Commission. The request was granted and the hearing was held on December 6, 2016. At the hearing, CRC addressed two issues related to the Convention Account and disclosure of disputed debts. (For more detail, See Audit Hearing at Finding 4, p. 25 and Additional Issue, p. 28, respectively.)

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	February 17, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Greenwood Village, Colorado	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	9 Federal, 8 Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Marty Neilson (11/20/2015 – present) Robert Balink (5/9/2014 – 11/19/2015) Christine Mastin (6/10/2013 – 5/8/2014)
• Treasurer During Period Covered by Audit	Richard A. Westfall (8/15/2007 – 6/9/2013)
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 70,571
Receipts	
○ Contributions from Individuals	1,975,834
○ Contributions from Political Committees	61,630
○ Transfers from Affiliated and Other Party Committees	8,332,317
○ Transfers from Non-Federal Accounts	1,940
○ Other Receipts	235,765
Total Receipts	\$ 10,607,486
Disbursements	
○ Operating Expenditures	8,863,660
○ Federal Election Activity	1,374,497
○ Refunds of Contributions	3,050
Total Disbursements	\$ 10,241,207
Cash-on-hand @ December 31, 2012	\$ 436,850

Part III

Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. In response to the Draft Final Audit Report, CRC filed amended reports and materially corrected the misstatements for 2012. However, CRC has not made an adjustment to reconcile the cash balance on its most recent report.

The Commission approved a finding that CRC misstated its financial activity for calendar years 2011 and 2012. The Commission further approved a finding that CRC materially misstated its financial activity in its original reports files for calendar years 2011 and 2012. (For more detail, see p. 7.)

The Commission did not approve by the required four votes the portion of the Audit staff's recommendation related to the Republican National Convention Expense Account. As such, this portion of the finding is presented in the "Additional Issue" section. (For more detail, see p. 26.)

Finding 2. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule E (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer

material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer materials exemption.

The Audit staff reexamined the documentation provided during fieldwork related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24-hour reports totaling \$32,164.

After Audit fieldwork, CRC submitted four new direct mail communications and two new invoices which associated some of the direct mail communications to the invoices not previously provided. This new documentation increased the total amount of independent expenditures to \$931,594 and reduced the number of direct mailers containing express advocacy that did not have associated invoices to 68. No additional volunteer materials exemption documentation was provided.

The Commission's approved finding was subject to the following amendments. The Commission approved a finding that CRC failed to properly disclose independent expenditures totaling at least \$694,682. The Commission further approved a finding that, of the 68 mailers not correlated with invoices, CRC failed to properly disclose independent expenditures for at least 51 direct mailers. Finally, the Commission approved a finding that CRC failed to file 24/48-hour reports for independent expenditures totaling at least \$694,682 and at least 51 mailers for which the Commission does not have invoices. (For more detail, see p. 11.)

Finding 3. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448, on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail," "direct mail advertising" or "party direct mail." Documentation that was provided by CRC was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

After Audit fieldwork, CRC submitted four new direct mail communications and two new invoices which associated some of the direct mail communications to the invoices not previously provided. This new documentation associated some of the previously provided invoices with direct mail communications. This new documentation and information resulted in a \$1,376,698 reduction in missing records. Therefore, CRC did not provide the necessary records pertaining to disbursement totaling \$4,435,750.

The Commission approved a finding that CRC did not provide the necessary records pertaining to disbursements totaling \$4,435,750. (For more information, see p. 19.)

Finding 4. Failure to Itemized Debts and Obligations

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV) vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considered the matter unresolved. CRC requested a hearing before the Commission to discuss this matter. (For more detail, see Audit Hearing, p. 25.)

The Commission approved a finding that CRC failed to itemize debts and obligations totaling \$235,968. (For more detail, see p. 22.)

Additional Issue

Misstatement of Financial Activity – Unreported Bank Account

During audit fieldwork, CRC provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. CRC requested a hearing before the Commission to discuss this matter. (For more detail, see p. 28.)

The Commission did not approve by the required four votes the portion of the Audit staff's misstatement finding related to the unreported bank account. Pursuant to Commission Directive 70,² this bank account is discussed in the "Additional Issue" section. (For more detail, see p. 26.)

² Directive 70 is available at <https://www.fec.gov/about/leadership-and-structure/#commission-directives-and-policy>.

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. In response to the Draft Final Audit Report, CRC filed amended reports and materially corrected the misstatements for 2012. However, CRC has not made an adjustment to reconcile the cash balance on its most recent report.

The Commission approved a finding that CRC misstated its financial activity for calendar years 2011 and 2012. The Commission further approved a finding that CRC materially misstated its financial activity in its original reports files for calendar years 2011 and 2012.

The Commission did not approve by the required four votes the portion of the Audit staff's recommendation related to the Republican National Convention Expense Account. As such, this portion of the finding is presented in the "Additional Issue" section.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Misstatement of Financial Activity— Most Recent Reports Filed Prior to the Audit

1. Facts

The Audit staff reconciled CRC's reported financial activity with its bank records for calendar years 2011 and 2012. The following charts outline the discrepancies between CRC's disclosure reports and its bank records. Succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2011	\$71,745	\$70,571	(\$ 1,174) Overstated
Receipts	\$722,469	\$717,741	(\$4,728) Overstated
Disbursements	\$634,792	\$673,321	(\$38,529) Understated
Ending Cash-on-Hand @ December 31, 2011	\$ 159,422	\$ 114,991	(\$ 44,431) Overstated

The beginning cash balance was overstated by \$1,174 and the discrepancy is unexplained, but likely resulted from prior period discrepancies.

The understatement of disbursements resulted from the following:

• Transfers to non-federal accounts, not reported	\$35,805
• Disbursements not reported	2,448
• Unexplained difference	276
Understatement of Disbursements	<u>\$38,529</u>

The overstatement of \$44,431 of the ending cash balance was a result of the reporting discrepancies for disbursements described above as well as the \$4,728 overstatement of receipts.

2012 Committee Activity			
	Reported	Bank Records³	Discrepancy
Beginning Cash-on-Hand @ January 1, 2012	\$159,422	\$114,991	(\$ 44,431) Overstated
Receipts	\$9,678,749	\$9,889,745	\$210,996 Understated
Disbursements	\$9,422,685	\$9,567,886	(\$145,201) Understated
Ending Cash-on-Hand @ December 31, 2012	\$ 415,486	\$ 436,850	\$ 21,364 Understated

³ Correct reportable activity includes an adjustment to the bank account for \$9,146 itemized by CRC on Schedule A (Itemized Receipts) to correct the cash balance as recommended in a prior audit of CRC. See the Final Audit Report on the Colorado Republican Federal Campaign Committee, 2008 election cycle, Finding 1 – Misstatement of Financial Activity, Audit Division Recommendation, page 8.

The understatement of receipts resulted from the following:

• In-kind contributions, not reported as receipts ⁴	\$162,099
• Receipts from an individual and a PAC, not reported	25,000
• Unexplained difference	<u>23,897</u>
Understatement of Receipts	<u>\$210,996</u>

The understatement of disbursements resulted from the following:

• In-kind contributions, not reported as disbursements ⁴	\$162,099
• Disbursements in bank, not on reports	27,666
• Disbursements on reports, not in bank	(13,336)
• Incorrect or duplicate disbursement amounts reported	(23,228)
• Unexplained difference	<u>(8,000)</u>
Understatement of Disbursements	<u>\$145,201</u>

The \$21,364 understatement of the ending cash balance was a result of the reporting discrepancies noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff provided workpapers and discussed the misstatement of financial activity at the exit conference. CRC representatives asked questions for clarification during the discussion, however, they did not provide a response to either the disbursements or receipts misstatements.

The Interim Audit Report recommended that CRC amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may have affected the recommended adjustments.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit Division's recommendations regarding Finding 1A. CRC explained that the misstatements were inadvertent and that it would file amendments to the relevant reports consistent with the recommendation. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. However, CRC did not materially comply with the recommendations to correct the misstatements in 2012, nor did it make an adjustment to reconcile the cash balance on its most recent report.

4. Draft Final Audit Report

The Draft Final Audit Report reiterated that CRC failed to file amended reports pertaining to the 2012 misstatements and did not make an adjustment to reconcile the cash balance on its most recent report.

⁴ The unreported in-kind transactions discussed above were for disbursements paid on behalf of CRC for equipment and software licensing by the Republican National Committee (RNC) and the Republican Party of Wisconsin (RPW). Both the RNC and the RPW reported these transactions as in-kind contributions made to CRC.

5. Committee Response to the Draft Final Audit Report

In its response to the Draft Final Audit Report, CRC restated that it agreed with the Audit staff's recommendation regarding Finding 1A. CRC further stated that it inadvertently failed to file amendments for 2012; that it would file these amendments on or before October 31, 2016; and that it would complete its compliance with the Audit staff's recommendations. CRC subsequently filed amended reports and materially corrected the misstatements for 2012. The Audit staff noted that, to date, CRC did not adjust its ending cash as recommended above.

6. Audit Hearing

CRC did not address this finding during the Audit hearing.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

B. Misstatement of Financial Activity – Original Reports Filed

1. Facts

During audit fieldwork, in addition to examining CRC's most recent reports filed prior to audit notification, the Audit staff compared CRC's originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which CRC had misstated its original filings.

The Audit staff calculated that CRC understated the sum of the reported receipts on the original reports filed by \$803,097 and the sum of the reported disbursements on the original reports filed by \$637,688 over the two-year period (2011-2012). These figures include the \$4,728 and \$38,529 understatement of receipts and disbursements, respectively from 2011, and the \$210,996 and \$145,201⁵ of the understatement of receipts and disbursements, respectively, from 2012 discussed in Section A above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the understatement of receipts and disbursements on its original reports during the exit conference and provided copies of relevant schedules detailing the receipts and disbursements not reported. CRC representatives asked questions for clarification, and stated they understood the finding, but related that they inadvertently filed incorrect original reports.

⁵ Net disbursement adjustments identified in Section A above (Misstatement of Financial Activity - Most Recent Reports Filed Prior to the Audit), totaling \$9,686, were correctly disclosed on the original reports in 2012.

The Interim Audit Report recommended that CRC provide any additional comments it deemed necessary with respect to this matter.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit staff's recommendations regarding Finding 1B but provided no further comments.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that CRC materially misstated its financial activity for the original reports filed.

5. Committee Response to the Draft Final Audit Report

In its response to the Draft Final Audit Report, CRC restated that it agreed with the Audit staff's recommendation regarding Finding 1B and provided no further comments.

6. Audit Hearing

CRC did not address this finding during the Audit hearing.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC materially misstated its financial activity in its original reports filed for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

Finding 2. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule E (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not

reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer material exemption.

The Audit staff reexamined the documentation provided during fieldwork related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24-hour reports totaling \$32,164.

After Audit fieldwork, CRC submitted four new direct mail communications and two new invoices which associated some of the direct mail communications to the invoices not previously provided. This new documentation increased the total amount of independent expenditures to \$931,594 and reduced the number of direct mailers containing express advocacy that did not have associated invoices to 68. No additional volunteer materials exemption documentation was provided.

The Commission's approved finding was subject to the following amendments. The Commission approved a finding that CRC failed to properly disclose independent expenditures totaling at least \$694,682. The Commission further approved a finding that, of the 68 mailers not correlated with invoices, CRC failed to properly disclose independent expenditures for at least 51 direct mailers. Finally, the Commission approved a finding that CRC failed to file 24/48-hour reports for independent expenditures totaling at least \$694,682 and at least 51 mailers for which the Commission does not have invoices.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
 - When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates.
- 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

F. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public

communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for Federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that CRC did not disclose any independent expenditures on Schedule E, however, made apparent media-related expenditures totaling \$357,895 and disclosed them as operating expenditures. These communications, as well as others that are not associated with invoices, were identified as possible independent expenditures. A breakdown analysis of these expenditures is as follows:

a. Independent Expenditures Reported as Operating Expenditures (Associated Invoice Provided)

CRC made nine apparent independent expenditures totaling \$357,895 that were documented as follows:

- i. CRC made six disbursements for apparent independent expenditures for direct mail totaling \$203,995 for which it provided a copy of the direct mailer with an associated invoice. According to the Audit staff, each of these direct mailers contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a).
- ii. CRC made three disbursements for apparent independent expenditures for radio ads totaling \$153,900 for which it provided supporting documentation such as payment reconciliations, airing dates, scripts and audio files. The beginning of one of the audio files included the voice of an opposition federal candidate. Based upon this portion of the audio file, and the associated script, it appeared this radio ad expressly advocated the election or defeat of a clearly identified candidate as defined under 11 CFR 100.22(b).

b. Independent Expenditures Reported as Operating Expenditures (No Invoice Associated)

CRC provided 77 different direct mail communications that contained express advocacy, as defined under 11 CFR 100.22(a) or (b). The communications are as follows:

- i. 72 direct mail communications contained language expressly advocating the election or defeat of clearly identified candidates, as defined under 11 CFR 100.22(a).
- ii. Five direct mail communications contained language that encouraged the reader to vote for Republicans and help repeal "Obamacare", with various reasons why Obamacare was bad for Colorado and/or America's economy. Based on the definition of express advocacy under 11 CFR 100.22(b), these communications could only be interpreted by a reasonable person as advocating the election or defeat of clearly identified candidates.

CRC did not provide sufficient information to allow each of the 77 communications to be associated with an invoice. Without this additional information, the Audit staff is unable to calculate the disbursement amount for each communication. (See Finding 3.)

c. Volunteer Material Exemption

In response to the Audit staff's request during fieldwork for documentation to support that volunteers participated in exempt activity,⁶ CRC provided forms signed by 22 different mail processing volunteers. These forms reflected the volunteer's name, site location, and on most forms, the date. The mail piece section was left blank on all forms with one exception, in which a candidate's last name was specified. Based on the dates on the forms, it appeared most of this volunteer activity occurred immediately prior to the 2012 General Election.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Arizona Republican Party, the Democratic Executive Committee of Florida, and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption,⁷ but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

⁶ CRC has not claimed that any exemptions apply with respect to any expenditures discussed above such as, for example, volunteer material exemption, slate cards exemptions, etc.

⁷ Proposed Interim Enforcement Policy, Agenda document No. 10-16.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended at the conclusion of fieldwork that CRC provide more detailed information and documentation for any volunteer involvement associated with each mailer.

2. Interim Audit Report and Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of disclosure errors for independent expenditures. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

The Interim Audit Report recommended that CRC:

- Provide additional invoices and/or information associating the 77 direct mail communications containing express advocacy with an invoice; and
- Provide documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mail communications containing express advocacy, did not require reporting as independent expenditures. Evidence should have included any documentation such as volunteer timesheets and photographs to support the involvement of volunteers in the processing or distribution of the communications noted above.
- Absent such evidence, CRC should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all documentation in its possession substantiating volunteer involvement including the volunteer names, the location where the work was done and the date of the volunteer involvement. CRC stated it had never been requested to provide volunteer timesheets and photographs, and that it did not collect such information. CRC further stated that "...it has provided enough information to substantiate application of the volunteer material exemption" and that it would not make any amendments to disclose the disbursements in question as independent expenditures.

The Audit staff maintains that the \$153,900 spent on radio communications should be reported as independent expenditures since the volunteer materials exemptions does not apply to those communications.

With respect to the 22 volunteer forms signed by volunteers on direct mailers of \$93,090, the Audit staff has reexamined the documentation and believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are not considered independent expenditures. For the remaining communications (consisting of \$110,905 and 77 direct mailers without invoices) that CRC claims the volunteer materials exemption is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence will assist the Commission in determining if the volunteer materials exemption is applicable to these communications.

4. Draft Final Audit Report

The Draft Final Audit Report reiterated that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence would have assisted the Commission in determining if the volunteer materials exemption is applicable to these communications.

5. Committee Response to the Draft Final Audit Report

In its response to the Draft Final Audit Report, CRC stated it partially disagreed with the Audit staff's recommendation and continued to claim that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer materials exemption. CRC stated it believed that it previously provided all necessary documentation.

On March 20, 2017, CRC submitted 121 pages of additional documentation that included four new direct mail communications and two new invoices. The documentation also associated some of the direct mail communications to the invoices that had been provided during fieldwork. This new documentation increased the total amount of independent expenditures to \$931,594 and reduced the number of direct mailers containing express advocacy that did not have associated invoices to 68. No additional volunteer materials exemption documentation was provided.

6. Audit Hearing

CRC did not address this finding during the Audit hearing.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC failed to properly disclose independent expenditures totaling \$931,594. Further, the Audit staff recommended that the Commission find that CRC failed to properly disclose independent expenditures associated with 68 direct mailers which contained expressed advocacy.

The Commission approved the Audit staff's recommendation with the following amendments. The Commission found that CRC failed to properly disclose

independent expenditures totaling at least \$694,682⁸ and, that of the 68 direct mailers not correlated with invoices, CRC failed to properly disclose independent expenditures for at least 51⁹ direct mailers.

B. Failure to File 24/48-Hour Reports for Apparent Independent Expenditures

1. Facts

In addition to not reporting any independent expenditures during the audit period, CRC also did not file 24 or 48-hour reports for any independent expenditures. Therefore, the apparent independent expenditures identified above by the Audit staff may also have required such a filing.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided CRC with a schedule of possible undisclosed 24/48-hour reports. CRC representatives did not offer any comments regarding this matter.

The Interim Audit Report recommended that, absent documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mailer communications containing express advocacy did not require reporting as independent expenditures (per Part A above), CRC provide documentation to support the date of public dissemination for each communication to determine whether a filing of a 24/48-hour report was required.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. For that reason, CRC did not believe any 24 or 48-hour reports were necessary for these disbursements.

The Audit staff maintains the \$153,900 in radio advertisements are independent expenditures that required 24-hour reports totaling \$32,164.

The Audit staff maintained that unless further evidence of the volunteer involvement with the specific communications is provided, the Commission may have concluded the remaining direct mailers totaling \$110,905 as well as the 77 direct mailers without invoices may be reportable as independent expenditures and may require 24 or 48-hour reports.

⁸ This number reflects further reduction of \$236,912 which resulted from the removal of five direct mail communications totaling \$115,176 and three radio ads totaling \$121,736 due to a lack of consensus as to whether these ads constituted express advocacy. $\$694,682 = \$931,594 - \$236,912$. All numbers rounded to the nearest dollar.

⁹ The Commission removed 17 additional ads with no associated invoices due to the lack of consensus as to whether these ads constitute an express advocacy. $51 = 68 - 17$.

4. Draft Final Audit Report

The Draft Final Audit Report reiterated that \$153,900 in radio advertisements were independent expenditures that required 24-hour reports totaling \$32,164, and, that unless further evidence of the volunteer involvement with the specific communications is provided, the Commission may determine that the remaining direct mailers totaling \$110,905 as well as the 77 direct mailers without invoices might be reportable as independent expenditures and may require 24 or 48-hour reports.

5. Committee Response to the Draft Final Audit Report

In its response to the Draft Final Audit Report, CRC stated it would not make any amendments to disclose the disbursements in question as independent expenditures and continued to believe that 24/48-hour reports were not necessary.

On March 20, 2017, CRC submitted 121 pages of additional documentation that included four new direct mail communications and two new invoices. The documentation also associated some of the direct mail communications to the invoices that had been provided during fieldwork. This new documentation increased the total amount of independent expenditures to \$931,594 and reduced the number of direct mailers containing express advocacy that did not have associated invoices to 68. No additional volunteer materials exemption documentation was provided.

6. Audit Hearing

CRC did not address this finding during the Audit hearing.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC did not file 24/48-hour reports totaling \$32,164 for apparent independent expenditures totaling \$153,000. Further, the Audit staff recommended that the Commission find that CRC did not file 24/48-hour reports for additional apparent independent expenditures totaling \$931,594 as well as 68 mailers with no invoices.

The Commission approved the Audit staff's recommendation with the following amendment. The Commission found that CRC failed to file 24/48-hour reports for independent expenditures totaling at least \$694,682 and at least 51 direct mailers.

Finding 3. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448, on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail," "direct mail advertising" or "party direct mail." Documentation that was provided by CRC was insufficient to make a

determination pertaining to the purpose for these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1). After Audit fieldwork, CRC submitted four new direct mail communications and two new invoices which associated some of the direct mail communications to the invoices not previously provided. This new documentation associated some of the previously provided invoices with direct mail communications. This new documentation and information resulted in a \$1,376,698 reduction in missing records. Therefore, CRC did not provide the necessary records pertaining to disbursement totaling \$4,435,750.

The Commission approved a finding that CRC did not provide the necessary records pertaining to disbursements totaling \$4,435,750.

Legal Standard

A. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

B. Preserving Records and Copies of Reports. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC made 28 expenditures totaling \$5,812,448 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures).

The Audit staff's analysis resulted in the following:

i. **Disbursements- No Invoices or Copies of Communications Provided (\$2,156,415)**

Disbursements totaling \$2,156,415 were paid to two direct mail vendors, and were disclosed on Schedule B with purposes of "direct mail", "direct mail advertising" or "party direct mail", but no invoices or associated communications were provided. Without sufficient details, the Audit staff is unable to verify CRC's reporting of these amounts as operating expenditures. The Audit staff requested copies of the invoices and the associated direct mail piece for each of the disbursements. To date, these invoices or other information to associate the payments to a particular communication have not been provided.

ii. **Disbursements- Invoices Provided – Not Able to Associate with Copies of Communications (\$3,656,033)**

Disbursements totaling \$3,656,033 were paid to direct mail vendors and were disclosed on Schedule B with purposes of "direct mail," "direct mail advertising" or "party direct mail." For these disbursements, CRC provided invoices but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify CRC's reporting itemization of these amounts as operating expenditures. The Audit staff requested information that would allow an association between the invoice and the communication, however, CRC has not responded to this request.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary to verify the accuracy of CRC's reporting. The Audit staff again requested that CRC provide additional invoices and information that would associate each invoice to the corresponding communication. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

The Interim Audit Report recommended that CRC provide, in sufficient detail, the necessary information from which the reported operating expenditures totaling \$5,812,448 may be verified or explained. Such records should have included:

- Copies of invoices and identification of the associated communication, and
- If the communication has already been provided, information associating each communication with an invoice(s).

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained that it has provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with

invoices as soon as the record is complete. Absent the provision of records, the Audit staff considered the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

D. Draft Final Audit Report

In its response to the Draft Final Audit Report, CRC continued to disagree with the Audit's staff assertion. CRC restated that it has previously provided all documentation in its possession in a series of letters, USB thumb-drives and online file site links between January 31, 2014 and August 11, 2014. CRC further stated that it continued to work to associate the already provided invoices and communications with each other. According to CRC, this was a time-consuming task that has not been possible in advance of November 8, 2016 election. CRC stated it would complete this work and provide a final record associating all communications with invoices on or before December 31, 2016.

On March 20, 2017, CRC submitted additional vendor invoices for \$39,483. The Audit staff was able to associate these invoices with the corresponding mail pieces totaling \$1,337,215. As such, the Audit staff adjusted the amount of disbursements for which CRC provided no records, to \$4,435,750.¹⁰

E. Audit Hearing

CRC did not address this finding during the Audit hearing.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC did not provide the necessary records pertaining to disbursements totaling \$4,435,750.

The Commission approved the Audit staff's recommendation.

Finding 4. Failure to Itemize Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV) vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considered the matter unresolved. CRC requested a hearing before the Commission to discuss this matter.

¹⁰ \$4,435,750 = \$5,812,448 - (\$39,483 + \$1,337,215)

The Commission approved a finding that CRC failed to itemize debts and obligations totaling \$235,968.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee until those debts are extinguished. 52 USC §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by or to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less, not including rent, salary or other regularly reoccurring administrative expenses, must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- Regularly recurring administrative expenses, like rent, do not have to be treated as debts until payment is due.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

D. Disputed Debts. A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the committee must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor. 11 CFR §116.10.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts¹¹ of three CRC vendors. This review identified debts owed to these three vendors totaling \$235,968 that should have been disclosed on Schedule D.¹²

One of the vendors provided legal services and had debt outstanding at the end of four reporting periods totaling \$100,197, including an outstanding balance at the end of the

¹¹ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2011 – 2012 election cycle. The Audit staff then determined whether outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

¹² There was no debt reported during the audit period for any of these three vendors.

audit period of \$13,541. A second vendor that provided accounting services had an outstanding balance at the end of one reporting period for \$2,284, but did not have an outstanding balance at the end of the audit period. The last vendor had debt outstanding at the end of the audit period of \$133,487 that pertained to the unpaid balance of a contract for a GOTV program.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed these disclosure errors with CRC representatives and provided them with schedules detailing the debts that were not reported. CRC representatives disagreed with the Audit staff's determination with respect to the disclosure of debts owed to the vendor that provided legal services. Subsequent to the exit conference, CRC requested the consideration of a legal question by the Commission regarding the disclosure of the debt for legal services prior to payment. CRC contended the disclosure would violate confidential attorney/client privileges.¹³ CRC representatives also disagreed with the requirement to disclose debt for the GOTV program, stating that CRC had terminated the contract before the vendor provided all contracted services. CRC representatives provided a copy of an unsigned letter, sent by CRC to the GOTV program vendor, which advised this vendor of an immediate termination of the contract.

Based on the terms of contract, its termination does not release CRC from the obligation to make pro rata payments of fees for the services provided by the vendor. CRC stated that it terminated the contract before the vendor provided *all* of the contracted services which suggests that the vendor provided at least *some* of the contracted services before the termination of the contract. Available disbursement documentation provided by CRC did not indicate as to whether CRC paid the vendor for services that the vendor provided to CRC prior to the termination.

The Interim Audit Report recommended that CRC provide documentation demonstrating that expenditures totaling \$235,968 did not require reporting on Schedule D. As for the GOTV program vendor, the Interim Audit Report further recommended that CRC provide information and documentation relating to debt remaining for any services that the vendor provided before the termination of the contract. Since the termination letter was not signed, CRC should have submitted documentation such as a signed letter to the vendor, e-mails or telephone logs regarding the termination. Absent such documentation, the Interim Audit Report recommended that CRC amend its reports to disclose these debts and obligations.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendations, CRC stated that, given the Commission's determination that the amounts owed to CRC's former counsel were not privileged from disclosure, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former GOTV vendor due to the termination of the contract. CRC provided the previously submitted unsigned

¹³ See Part I Background, Commission Guidance at p. 1.

termination letter but did not submit any documentation related to debt for any services prior to termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the \$133,487 debt owed to the GOTV vendor, the Audit staff considered the matter unresolved.

D. Draft Final Audit Report

The Draft Final Audit Report concluded that absent the filing of amended reports to include the \$133,487 debt owed to the GOTV vendor, the Audit staff considered the matter unresolved.

E. Committee Response to the Draft Final Audit Report

CRC responded to the Draft Final Audit Report by requesting a hearing on this matter. CRC stated that:

1. It has appropriately declined to amend its reports to the amounts allegedly owed to its former GOTV vendor, as that the contract was terminated and the amounts were disputed by CRC.
2. These amounts were never paid and the statute of limitations for any breach of the agreement has run out. CRC therefore believes it cannot amend its reports as any amounts allegedly owed to the vendor were and are not properly debt.

F. Audit Hearing

During the Audit hearing, CRC reiterated its position that it would not amend its reports due to the termination of contract. CRC argued that the statute of limitation under the Colorado law has expired. CRC did not provide any further documentation, nor any new legal arguments.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CRC failed to itemize debts and obligations totaling \$235,968.

The Commission approved the Audit staff's recommendation.

Part V

Additional Issue

Misstatement of Financial Activity – Unreported Bank Account

Summary

During audit fieldwork, CRC provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. CRC requested a hearing before the Commission to discuss this matter.

The Commission did not approve by the required four votes the portion of the Audit staff's misstatement finding related to the unreported bank account. Pursuant to Commission Directive 70,¹⁴ this bank account is discussed in the "Additional Issue" section.

Legal Standard

The legal standard in the Finding 1, p. 7, above is incorporated herein.

Facts and Analysis

1. Facts

During audit fieldwork, CRC representatives provided bank statements and other banking documentation for a bank account that was identified on the bank statements as the Colorado State Republican Central Committee Republican National Convention Expense Account (Convention Account).¹⁵ This account was maintained at the same financial depository used by CRC for other federal and non-federal bank accounts. The bank statements reflected that the Convention Account was active in January 2012, although it had a zero balance until April 20, 2012, at which time a deposit of \$1,000 was made.¹⁶ Although CRC provided copies of bank statements, deposit tickets and cancelled checks pertaining to this account, none of the receipts or disbursements appeared to have been

¹⁴ Directive 70 is available at <https://www.fec.gov/about/leadership-and-structure/#commission-directives-and-policy>.

¹⁵ As noted in the scope limitations section of this report, CRC representatives also identified an additional federal bank account in its written response to the Internal Control Questionnaire, but have not yet provided bank statements or other documentation pertaining to this account to indicate whether there was reportable activity during the audit period. See p. 2.

¹⁶ The next deposit into this account was not made until June 13, 2012 (\$5,250). The first debit (by wire) occurred on August 10, 2012 (\$10,000).

reported. For the calendar year 2012, the total activity and the cash balance were as follows: receipts, \$87,354; disbursements, \$86,428; and ending cash-on-hand, \$926.¹⁷

In response to an Audit staff query, CRC's Chairman (Chairman) explained that the financial activity from this account did not need to be reported since it was a bank account that belonged to a separate legal entity identified as the Colorado Chairman's Host Committee for the Republican National Convention (Colorado RNC Host) and neither CRC or any of its officers or agents managed or controlled that committee's activities. The Chairman also provided a copy of the Articles of Incorporation that reflected the Colorado RNC Host was incorporated in the state of Colorado as a Non-Profit 501(c)(4) corporation on June 26, 2012 and was established independently to accept contributions and pay for certain events and promotion items for delegates and their guests from Colorado and other states in connection with the 2012 Republican National Convention in Tampa, Florida. The Chairman provided a link to the Colorado Secretary of State website and related any additional questions pertaining to the Colorado RNC Host should be directed to that committee's legal representatives. The Chairman did not explain how CRC came to be in possession of the bank statements and other banking documentation. Likewise, the Chairman did not explain why the bank statement's name included the Colorado State Republican Central Committee, indicating CRC was an account holder of this account. Although requested, CRC did not authorize the Audit staff to submit a request to the bank to confirm the Employee Identification Number (EIN)¹⁸ that was associated with this account, nor did CRC provide any documentation from the bank that would clarify this matter.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the Convention Account during the exit conference and provided relevant schedules detailing the financial activity pertaining to this account. At that time, the Audit staff again requested that CRC provide documentation from the bank or give the Audit staff authority to contact the bank to confirm the EIN associated with this account. The CRC representatives provided documentation pertaining to the EIN for the Colorado Chairman's Host Committee for the Republican National Convention, but did not provide additional documentation from the bank to verify that the Convention Account was assigned to this EIN.

The Interim Audit Report recommended that CRC provide additional documentation to resolve the question of ownership and control of the Convention Account. To support its position, CRC should have obtained pertinent bank documentation confirming that the CRC's EIN was not associated with the Convention Account and, therefore, CRC was not required to report the financial activity associated with this account.

¹⁷ The tables and charts presented in Finding 1.A (Most Recent Reports Filed Prior to the Audit), p. 8, do not include an analysis of the Convention Account.

¹⁸ The EIN is a unique nine-digit number that the Internal Revenue Service and other federal agencies use to identify a business. Banks will not allow a business entity to open an account without providing an EIN.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC expressed its disagreement regarding this finding. CRC stated that it has previously provided documentation demonstrating that the account in question was not controlled by CRC and, as such, was not an unreported federal account. CRC's position is that it has, by its prior correspondence, sufficiently demonstrated that it does not control the Convention Account. With its response, CRC enclosed a copy of the prior correspondence.

The Audit staff maintained that previously provided documentation did not resolve the question of ownership and control of the Convention Account. Absent bank documentation that would confirm CRC was not associated with the Convention Account, the Audit staff considered this matter unresolved.

4. Draft Final Audit Report

The Draft Final Audit Report reiterated that absent bank documentation that would confirm that CRC was not associated with the Convention Account, the Audit staff considered this matter unresolved.

5. Committee Response to the Draft Final Audit Report

CRC responded to the Draft Final Audit Report by requesting a hearing on this matter. CRC stated that:

1. It disagreed with the Audit staff's recommendation and conclusion that the matter was unresolved.
2. It previously provided documentation that it did not control the Convention Account and therefore it was not an unreported federal account.
3. By its prior correspondence, CRC has sufficiently demonstrated that it did not control the Convention Account.

6. Audit Hearing

During the Audit hearing, CRC reiterated its position that it previously provided documentation that it did not control the Convention Account. CRC did not consider this account to be a federal account and, that by its prior correspondence, CRC has sufficiently demonstrated that it did not control the Convention Account. CRC did not provide any further documentation, nor any new legal arguments.

Commission Conclusion

On May 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that based on the documentation provided by CRC, the Convention Account was a federal account and that CRC should have reported the financial activity associated with this account.

The Commission did not approve by the required four votes the Audit staff's recommendation. The Commission could not agree as to whether it had sufficient evidence to substantiate an unreported Convention Account owned and maintained by

CRC. Some Commissioners noted that CRC should not allow its EIN to be used by other organizations.

Pursuant to Commission Directive 70, this matter is presented as an "Additional Issue".

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